IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

O R D E R

Salim Vs. State of Rajasthan & Anr.

S.B.CR. MISC. PETITION NO.794/2007

DATE OF ORDER :: July 04, 2007

PRESENT

HON'BLE MR.JUSTICE H.R.PANWAR

Mr.R.S.Choudhary, for the petitioner.
Mr.Ashok Upadhyaya, P.P.

BY THE COURT:

This criminal misc. petition is directed against the order dt. 19.12.2006 passed by the Judicial Magistrate No.2, Pali (for short `the Magistrate court' hereinafter), whereby the Magistrate court dismissed the application filed by the petitioner under section 457 Cr.P.C.

Facts giving rise to the instant petition are that vehicle jeep bearing No.RJ-06-1C-0736 was seized by the transport authority. While checking the jeep, it was found plying without payment of the tax payable under the Rajasthan Motor Vehicles

Taxation Act, 1951 (for short `the Act of 1951' hereinafter). According to the taxation authority, the tax was assessed as Rs.9996/-. The petitioner being owner of the said jeep, filed an application before the Magistrate court. The Magistrate court dismissed the application on the ground that it has no jurisdiction in view of section 16 of the Act of 1951, which creates bar to jurisdiction of civil court and criminal court. Hence, this criminal misc. petition.

I have heard learned counsel for the parties. Perused the order impugned.

In the instant case, the vehicle in question has been seized by the transport authority for plying the vehicle in violation of provisions of Act of 1951 for not paying the due tax.

Section 16 of the Act of 1951 creates a bar to the jurisdiction of civil court and criminal court in the matter of taxation and provides that liability of a person to pay the tax shall not be questioned or determined otherwise than as provided in this Act or in rules made thereunder and no prosecution suit or other proceeding shall lie against any officer of the State Government for anything in good faith done or intended to be done under this Act.

Section 17 of the Act of 1951 empowers any police officer or authority of the transport department to stop a motor vehicle. Section 17 reads as under:

> 17. **Power to stop a motor vehicle**.-2 [(1)] Any police officer in uniform not below such rank, as may be prescribed and any officer of the Transport Department not below the rank of a Sub-Inspector [and any officer of the Commercial Taxes Department not below the rank of an Inspector posted at the check pots controlled by the Commercial Taxes Department] may require the driver of any motor vehicle in any public place to stop the vehicle and cause it to remain stationary so long as may reasonably be necessary for the purpose of satisfying himself that the amount of the tax due in accordance with the provisions of this Act in respect of such vehicle has been paid.
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> 4[(2)] Where any tax due in respect of any vehicle has not been paid, any officer referred to in sub-section (1), may seize and detain such vehicle and take or cause to be taken such steps as he may consider necessary for the safe custody of the vehicle until it is produced before the Taxation officer of the area concerned within a reasonable time or the tax due in respect of the vehicle is paid:
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> 5[(3) The motor vehicle seized under sub-section (2) shall not be released unless full tax due, penalty and interest and all other dues payable under the Act in respect of such a vehicle has been paid.]
> 6[(4) Where the vehicle has been

> seized or detained under sub-section (2), the owner or person incharge of the motor vehicle may apply to the Tax Officer or any officer authorised by the State Government together with relevant documents for the release of such vehicle and such officer shall, after the verification of the documents and on being satisfied that no tax, penalty and interest is due, by an order, release the vehicle.]

Thus from the perusal of the provisions of section 16 of the Act of 1951, it is clear that no Court, civil or criminal has jurisdiction to deal with the matter where the liability of a person to pay tax under the provisions of the Taxation Act, 1951 is involved. This question came to be considered by this Court in a petition filed by the State of Rajasthan being S.B.Cr.Misc. Petition No.68/2000 decided on 21.4.2005 holding therein that the vehicle was seized by the taxation authorities for violation of taxation law and it was held that it is not possible to claim the possession of the vehicle by the owner under section 457 of the Code. The jurisdiction to release the vehicles rests with the taxation authorities because it was not under the provisions of the Code and that vehicle was seized under the Rajasthan Motor Vehicles Taxation Act, 1951. There was a clear bar in the jurisdiction of the Civil and Criminal Court. Similar view has been taken by this Court in number of cases reference may be made to S.B.Cr. Misc. Petition No.904/2002. In this view of the matter,

I do not find any merit in the petition.

The petition under section 482 Cr.P.C. is, therefore, dismissed.

[H.R.PANWAR],J.

m.asif/-